

1-1 By: Hardcastle, et al. (Senate Sponsor - Averitt) H.B. No. 3732
1-2 (In the Senate - Received from the House April 27, 2007;
1-3 May 1, 2007, read first time and referred to Committee on Natural
1-4 Resources; May 15, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 15, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3732 By: Averitt

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the implementation of advanced clean energy projects
1-11 and other environmentally protective projects in this state.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 447, Government Code, is amended by
1-14 adding Section 447.013 to read as follows:

1-15 Sec. 447.013. ADVANCED CLEAN ENERGY PROJECT GRANT AND LOAN
1-16 PROGRAM. (a) In this section:

1-17 (1) "Account" means the advanced clean energy project
1-18 account established under this section.

1-19 (2) "Program" means the advanced clean energy project
1-20 grant and loan program established under this section.

1-21 (3) "Advanced clean energy project" has the meaning
1-22 assigned by Section 382.003, Health and Safety Code.

1-23 (b) The advanced clean energy project grant and loan program
1-24 is established to encourage the development of advanced clean
1-25 energy projects in an environmentally protective manner. The
1-26 program is administered by the State Energy Conservation Office.

1-27 (c) The advanced clean energy project account is an account
1-28 in the general revenue fund.

1-29 (d) The account consists of:

1-30 (1) a sub-account in the account that consists of the
1-31 proceeds of bonds issued under Subsection (j);

1-32 (2) revenues allocated to the account under Section
1-33 182.122, Tax Code;

1-34 (3) any amount appropriated by the legislature for the
1-35 account;

1-36 (4) gifts, grants, and other donations received for
1-37 the account; and

1-38 (5) interest earned on the investment of money in the
1-39 account.

1-40 (e) Money in the account may be appropriated only to the
1-41 State Energy Conservation Office to award grants or to make or
1-42 guarantee loans under this section. The total amount of grants that
1-43 may be awarded under this section in any state fiscal biennium from
1-44 revenues described by Subsection (d)(2) may not exceed \$20 million.
1-45 The total amount of loans that may be made or guaranteed under this
1-46 section in any state fiscal biennium from revenues described by
1-47 Subsection (d)(2) may not exceed \$10 million.

1-48 (f) Before awarding a grant or making a loan under this
1-49 section, the State Energy Conservation Office shall enter into a
1-50 written agreement with the entity to which the grant is to be
1-51 awarded or the loan is to be made. The agreement may specify that
1-52 if, as of a date specified by the agreement, the entity has not used
1-53 the grant or loan for the purposes for which the grant or loan was
1-54 intended, the entity shall repay the amount of the grant or the
1-55 amount of the loan and any accrued interest, as applicable, under
1-56 terms specified by the agreement.

1-57 (g) Under the program, the State Energy Conservation Office
1-58 may award a grant to the managing entity of an advanced clean energy
1-59 project in an amount not to exceed 50 percent of the total amount
1-60 invested in the project by private industry sources. The managing
1-61 entity of the project must provide any information considered
1-62 necessary by the State Energy Conservation Office to determine
1-63 whether the entity qualifies for the grant.

2-1 (h) Under the program, the State Energy Conservation Office
 2-2 may make or guarantee a loan to the managing entity of an advanced
 2-3 clean energy project in this state. If the loan or guarantee is to
 2-4 be funded by the proceeds of bonds issued under Subsection (j), the
 2-5 project must qualify for the loan or guarantee under Section 49-q,
 2-6 Article III, Texas Constitution.

2-7 (i) A recipient of a grant or loan under this section is
 2-8 encouraged to purchase goods and services from small businesses and
 2-9 historically underutilized businesses, as those terms are defined
 2-10 by Section 481.191, Government Code.

2-11 (j) The Texas Public Finance Authority shall issue general
 2-12 obligation bonds in accordance with and subject to Chapter 1232,
 2-13 Government Code, for the purposes authorized by Section 49-q,
 2-14 Article III, Texas Constitution.

2-15 SECTION 2. Section 382.003, Health and Safety Code, is
 2-16 amended by adding Subdivisions (1-a), (3-a), (7-a), and (11-a) to
 2-17 read as follows:

2-18 (1-a) "Advanced clean energy project" means a project
 2-19 for which an application for a permit under this chapter is received
 2-20 by the commission on or after January 1, 2008, and before January 1,
 2-21 2020, and that:

2-22 (A) involves the use of coal, biomass, petroleum
 2-23 coke, or solid waste, or hydrogen fuel cells derived from such
 2-24 fuels, in the generation of electricity, or the creation of liquid
 2-25 fuels outside of the existing fuel production infrastructure while
 2-26 co-generating electricity;

2-27 (B) is capable of achieving on an annual basis a
 2-28 99 percent or greater reduction of sulfur dioxide emissions, a 95
 2-29 percent or greater reduction of mercury emissions, and an emission
 2-30 rate for nitrogen oxides of 0.05 pounds or less per million British
 2-31 thermal units or of achieving the emissions profile required by
 2-32 rules adopted by the commission under Section 382.0566, if
 2-33 applicable; and

2-34 (C) renders carbon dioxide capable of capture,
 2-35 sequestration, or abatement.

2-36 (3-a) "Coal" has the meaning assigned by Section
 2-37 134.004, Natural Resources Code.

2-38 (7-a) "Federally qualified clean coal technology"
 2-39 means a technology or process, including a technology or process
 2-40 applied at the precombustion, combustion, or postcombustion stage,
 2-41 for use at a new or existing facility that will achieve on an annual
 2-42 basis a 97 percent or greater reduction of sulfur dioxide
 2-43 emissions, an emission rate for nitrogen oxides of 0.08 pounds or
 2-44 less per million British thermal units, and significant reductions
 2-45 in mercury emissions associated with the use of coal in the
 2-46 generation of electricity, process steam, or industrial products,
 2-47 including the creation of liquid fuels, hydrogen for fuel cells,
 2-48 and other coproducts. The technology used must comply with
 2-49 applicable federal law regarding mercury emissions and must render
 2-50 carbon dioxide capable of capture, sequestration, or abatement.
 2-51 Federally qualified clean coal technology includes atmospheric or
 2-52 pressurized fluidized bed combustion technology, integrated
 2-53 gasification combined cycle technology, methanation technology,
 2-54 magnetohydrodynamic technology, direct and indirect coal-fired
 2-55 turbines, undiluted high-flame temperature oxygen combustion
 2-56 technology that excludes air, and integrated gasification fuel
 2-57 cells.

2-58 (11-a) "Solid waste" has the meaning assigned by
 2-59 Section 361.003.

2-60 SECTION 3. Section 382.0518, Health and Safety Code, is
 2-61 amended by adding Subsection (c-1) to read as follows:

2-62 (c-1) In considering the issuance of a permit for a new
 2-63 electric generating facility, the commission shall analyze and
 2-64 consider:

2-65 (1) the cumulative effects of the facility's expected
 2-66 emissions together with the cumulative effects of the authorized
 2-67 emissions from all sources of pollution permitted under this
 2-68 section that are located within a radius of impact specified by
 2-69 commission rule; and

2-70 (2) whether the emissions from the facility will cause

3-1 an area to be designated a nonattainment area.

3-2 SECTION 4. Subchapter C, Chapter 382, Health and Safety
 3-3 Code, is amended by adding Sections 382.0566 and 382.0567 to read as
 3-4 follows:

3-5 Sec. 382.0566. ADVANCED CLEAN ENERGY PROJECT PERMITTING
 3-6 PROCEDURE. (a) As authorized by federal law, not later than nine
 3-7 months after the executive director declares an application for a
 3-8 permit under this chapter for an advanced clean energy project to be
 3-9 administratively complete, the executive director shall complete
 3-10 its technical review of the application.

3-11 (b) The commission shall issue a final order issuing or
 3-12 denying the permit not later than nine months after the executive
 3-13 director declares the application technically complete. The
 3-14 commission may extend the deadline set out in this subsection up to
 3-15 three months if it determines that the number of complex pending
 3-16 applications for permits under this chapter will prevent the
 3-17 commission from meeting the deadline imposed by this subsection
 3-18 without creating an extraordinary burden on the resources of the
 3-19 commission.

3-20 (c) The permit process authorized by this section is subject
 3-21 to the requirements relating to a contested case hearing under this
 3-22 chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001,
 3-23 Government Code, as applicable.

3-24 (d) The commission shall adopt rules to implement this
 3-25 section.

3-26 (e) Not later than September 1 of the years 2010, 2012,
 3-27 2014, 2016, and 2018, the commission shall:

3-28 (1) determine whether any element of the emissions
 3-29 profile specified by Section 382.003(1-a)(B) should be increased or
 3-30 decreased;

3-31 (2) determine whether any other regulated pollutant
 3-32 should be added to the emissions profile; and

3-33 (3) adopt rules adjusting the profile if the
 3-34 commission determines an adjustment to be appropriate.

3-35 (f) The factors the commission must consider under
 3-36 Subsection (e) in determining whether the emissions profile should
 3-37 be adjusted include:

3-38 (1) the technical and economic feasibility of
 3-39 achieving all of the elements of the emissions profile in a
 3-40 commercially viable project, as documented by the United States
 3-41 Department of Energy;

3-42 (2) the technical and economic feasibility of projects
 3-43 to achieve all of the elements of the emissions profile and still
 3-44 use a diverse range of fuels, including lignite; and

3-45 (3) the adequacy of the incentives provided by this
 3-46 section, Section 447.013, Government Code, and Sections 11.31,
 3-47 26.045, 182.022, 182.122, 202.0545, and 313.024, Tax Code, to
 3-48 continue to attract investment in and federal funding for advanced
 3-49 clean energy projects in this state.

3-50 (g) Any adjustment to the emissions profile that is adopted
 3-51 by commission rule under Subsection (e) applies only to an
 3-52 application that the executive director has not declared to be
 3-53 administratively complete as of the date the rule is adopted.

3-54 (h) The commission may not consider any technology or level
 3-55 of emission reduction to be adequately demonstrated or achievable
 3-56 for purposes of a best available control technology analysis or
 3-57 lowest achievable emission rate analysis conducted by the
 3-58 commission under another provision of this chapter solely because
 3-59 the technology is used or the emission reduction is achieved by a
 3-60 facility receiving an incentive under a law listed in Subsection
 3-61 (f)(3).

3-62 Sec. 382.0567. PROOF THAT TECHNOLOGY IS COMMERCIALLY
 3-63 FEASIBLE NOT REQUIRED. An applicant for a permit under this chapter
 3-64 for a project in connection with which advanced clean energy
 3-65 technology, federally qualified clean coal technology, or another
 3-66 technology is proposed to be used is not required to prove, as part
 3-67 of an analysis of whether the project will use the best available
 3-68 control technology or reduce emissions to the lowest achievable
 3-69 rate, that the technology proposed to be used has been demonstrated
 3-70 to be feasible in a commercial operation.

4-1 SECTION 5. Section 11.31, Tax Code, is amended by adding
4-2 Subsections (k), (l), and (m) to read as follows:

4-3 (k) The Texas Commission on Environmental Quality shall
4-4 adopt rules establishing a nonexclusive list of facilities,
4-5 devices, or methods for the control of air, water, or land
4-6 pollution, which must include:

4-7 (1) coal cleaning or refining facilities;
4-8 (2) atmospheric or pressurized and bubbling or
4-9 circulating fluidized bed combustion systems and gasification
4-10 fluidized bed combustion combined cycle systems;

4-11 (3) ultra-supercritical pulverized coal boilers;
4-12 (4) flue gas recirculation components;
4-13 (5) syngas purification systems and gas-cleanup
4-14 units;

4-15 (6) enhanced heat recovery systems;
4-16 (7) exhaust heat recovery boilers;
4-17 (8) heat recovery steam generators;
4-18 (9) superheaters and evaporators;

4-19 (10) enhanced steam turbine systems;
4-20 (11) methanation;
4-21 (12) coal combustion or gasification byproduct and
4-22 coproduct handling, storage, or treatment facilities;

4-23 (13) biomass cofiring storage, distribution, and
4-24 firing systems;
4-25 (14) coal cleaning or drying processes, such as coal
4-26 drying/moisture reduction, air jigging, precombustion
4-27 decarbonization, and coal flow balancing technology;

4-28 (15) oxy-fuel combustion technology, amine or chilled
4-29 ammonia scrubbing, fuel or emission conversion through the use of
4-30 catalysts, enhanced scrubbing technology, modified combustion
4-31 technology such as chemical looping, and cryogenic technology;

4-32 (16) if the United States Environmental Protection
4-33 Agency or the Texas Commission on Environmental Quality adopts a
4-34 final rule or regulation regulating carbon dioxide as a pollutant,
4-35 property that is used, constructed, acquired, or installed wholly
4-36 or partly to capture carbon dioxide from an anthropogenic source
4-37 that is used in an enhanced recovery project in this state or that
4-38 is geologically sequestered in this state;

4-39 (17) fuel cells generating electricity using
4-40 hydrocarbons without combustion; and

4-41 (18) any other equipment designed to prevent, capture,
4-42 abate, or monitor nitrogen oxides, volatile organic compounds,
4-43 particulate matter, mercury, carbon monoxide, or any criteria
4-44 pollutant.

4-45 (l) The Texas Commission on Environmental Quality by rule
4-46 shall update the list adopted under Subsection (k) at least once
4-47 every three years. An item may be removed from the list if the
4-48 commission finds compelling evidence to support the conclusion that
4-49 the item does not provide pollution control benefits.

4-50 (m) Notwithstanding the other provisions of this section,
4-51 if the facility, device, or method for the control of air, water, or
4-52 land pollution described in an application for an exemption under
4-53 this section is a facility, device, or method included on the list
4-54 adopted under Subsection (k), the executive director of the Texas
4-55 Commission on Environmental Quality, not later than the 30th day
4-56 after the date of receipt of the information required by
4-57 Subsections (c)(2) and (3) and without regard to whether the
4-58 information required by Subsection (c)(1) has been submitted, shall
4-59 determine that the facility, device, or method described in the
4-60 application is used wholly or partly as a facility, device, or
4-61 method for the control of air, water, or land pollution and shall
4-62 take the actions that are required by Subsection (d) in the event
4-63 such a determination is made.

4-64 SECTION 6. Section 26.045, Tax Code, is amended to read as
4-65 follows:

4-66 Sec. 26.045. ROLLBACK RELIEF FOR POLLUTION CONTROL
4-67 REQUIREMENTS. (a) The rollback tax rate for a political
4-68 subdivision of this state is increased by the rate that, if applied
4-69 to the total current value, would impose an amount of taxes equal to
4-70 the amount the political subdivision will spend out of its

5-1 maintenance and operation funds under Section 26.012(16) [~~Tax~~
 5-2 ~~Code,~~] to pay for a facility, device, or method for the control of
 5-3 air, water, or land pollution that is necessary to meet the
 5-4 requirements of a permit issued by the Texas [~~Natural Resource~~
 5-5 ~~Conservation~~] Commission on Environmental Quality.

5-6 (b) In this section, "facility, device, or method for
 5-7 control of air, water, or land pollution" means any land,
 5-8 structure, building, installation, excavation, machinery,
 5-9 equipment, or device, and any attachment or addition to or
 5-10 reconstruction, replacement, or improvement of that property, that
 5-11 is used, constructed, acquired, or installed wholly or partly to
 5-12 meet or exceed rules or regulations adopted by any environmental
 5-13 protection agency of the United States or this state for the
 5-14 prevention, monitoring, control, or reduction of air, water, or
 5-15 land pollution.

5-16 (c) To receive an adjustment to the rollback tax rate under
 5-17 this section, a political subdivision shall present information to
 5-18 the executive director of the Texas [~~Natural Resource Conservation~~]
 5-19 Commission on Environmental Quality in a permit application or in a
 5-20 request for any exemption from a permit that would otherwise be
 5-21 required detailing:

5-22 (1) the anticipated environmental benefits from the
 5-23 installation of the facility, device, or method for the control of
 5-24 air, water, or land pollution;

5-25 (2) the estimated cost of the pollution control
 5-26 facility, device, or method; and

5-27 (3) the purpose of the installation of the facility,
 5-28 device, or method, and the proportion of the installation that is
 5-29 pollution control property.

5-30 (d) Following submission of the information required by
 5-31 Subsection (c), the executive director of the Texas [~~Natural~~
 5-32 ~~Resource Conservation~~] Commission on Environmental Quality shall
 5-33 determine whether [~~if~~] the facility, device, or method is used
 5-34 wholly or partly as a facility, device, or method for the control of
 5-35 air, water, or land pollution. If the executive director determines
 5-36 that the facility, device, or method is used wholly or partly to
 5-37 control pollution, the director shall issue a letter to the
 5-38 political subdivision stating that determination and the portion of
 5-39 the cost of the installation that is pollution control property.

5-40 (e) The Texas [~~Natural Resource Conservation~~] Commission on
 5-41 Environmental Quality may charge a political subdivision seeking a
 5-42 determination that property is pollution control property an
 5-43 additional fee not to exceed its administrative costs for
 5-44 processing the information, making the determination, and issuing
 5-45 the letter required by this section. The commission may adopt rules
 5-46 to implement this section.

5-47 (f) The Texas Commission on Environmental Quality shall
 5-48 adopt rules establishing a nonexclusive list of facilities,
 5-49 devices, or methods for the control of air, water, or land
 5-50 pollution, which must include:

5-51 (1) coal cleaning or refining facilities;

5-52 (2) atmospheric or pressurized and bubbling or
 5-53 circulating fluidized bed combustion systems and gasification
 5-54 fluidized bed combustion combined cycle systems;

5-55 (3) ultra-supercritical pulverized coal boilers;

5-56 (4) flue gas recirculation components;

5-57 (5) syngas purification systems and gas-cleanup
 5-58 units;

5-59 (6) enhanced heat recovery systems;

5-60 (7) exhaust heat recovery boilers;

5-61 (8) heat recovery steam generators;

5-62 (9) superheaters and evaporators;

5-63 (10) enhanced steam turbine systems;

5-64 (11) methanation;

5-65 (12) coal combustion or gasification byproduct and
 5-66 coproduct handling, storage, or treatment facilities;

5-67 (13) biomass cofiring storage, distribution, and
 5-68 firing systems;

5-69 (14) coal cleaning or drying processes such as coal
 5-70 drying/moisture reduction, air jigging, precombustion

6-1 decarbonization, and coal flow balancing technology;

6-2 (15) oxy-fuel combustion technology, amine or chilled
 6-3 ammonia scrubbing, fuel or emission conversion through the use of
 6-4 catalysts, enhanced scrubbing technology, modified combustion
 6-5 technology such as chemical looping, and cryogenic technology;

6-6 (16) if the United States Environmental Protection
 6-7 Agency or the Texas Commission on Environmental Quality adopts a
 6-8 final rule or regulation regulating carbon dioxide as a pollutant,
 6-9 property that is used, constructed, acquired, or installed wholly
 6-10 or partly to capture carbon dioxide from an anthropogenic source
 6-11 that is used in an enhanced recovery project in this state or that
 6-12 is geologically sequestered in this state;

6-13 (17) fuel cells generating electricity using
 6-14 hydrocarbons without combustion; and

6-15 (18) any other equipment designed to prevent, capture,
 6-16 abate, or monitor nitrogen oxides, volatile organic compounds,
 6-17 particulate matter, mercury, carbon monoxide, or any criteria
 6-18 pollutant.

6-19 (g) The Texas Commission on Environmental Quality by rule
 6-20 shall update the list adopted under Subsection (f) at least once
 6-21 every three years. An item may be removed from the list if the
 6-22 commission finds compelling evidence to support the conclusion that
 6-23 the item does not render pollution control benefits.

6-24 (h) Notwithstanding the other provisions of this section,
 6-25 if the facility, device, or method for the control of air, water, or
 6-26 land pollution described in a permit application or in a request for
 6-27 any exemption from a permit that would otherwise be required is a
 6-28 facility, device, or method included on the list adopted under
 6-29 Subsection (f), the executive director of the Texas Commission on
 6-30 Environmental Quality, not later than the 30th day after the date of
 6-31 receipt of the information required by Subsections (c)(2) and (3)
 6-32 and without regard to whether the information required by
 6-33 Subsection (c)(1) has been submitted, shall determine that the
 6-34 facility, device, or method described in the permit application or
 6-35 in the request for an exemption from a permit that would otherwise
 6-36 be required is used wholly or partly as a facility, device, or
 6-37 method for the control of air, water, or land pollution and shall
 6-38 take the action that is required by Subsection (d) in the event such
 6-39 a determination is made.

6-40 (i) A political subdivision of the state seeking an
 6-41 adjustment in its rollback tax rate under this section shall
 6-42 provide to its tax assessor a copy of the letter issued by the
 6-43 executive director of the Texas ~~Natural Resource Conservation~~
 6-44 Commission on Environmental Quality under Subsection (d). The tax
 6-45 assessor shall accept the copy of the letter from the executive
 6-46 director as conclusive evidence that the facility, device, or
 6-47 method is used wholly or partly as pollution control property and
 6-48 shall adjust the rollback tax rate for the political subdivision as
 6-49 provided for by Subsection (a).

6-50 SECTION 7. Section 182.022, Tax Code, is amended by adding
 6-51 Subsection (c) to read as follows:

6-52 (c) Notwithstanding any other provision of this chapter, a
 6-53 tax under this chapter may not be imposed on gross receipts from the
 6-54 sale of electricity generated by an advanced clean energy project,
 6-55 as defined by Section 382.003, Health and Safety Code.

6-56 SECTION 8. Section 182.122, Tax Code, is amended to read as
 6-57 follows:

6-58 Sec. 182.122. ALLOCATION OF TAX. (a) Revenues collected
 6-59 under this chapter are allocated:

6-60 (1) one-fourth to the foundation school fund; and

6-61 (2) three-fourths to the general revenue fund.

6-62 (b) The comptroller shall transfer to the advanced clean
 6-63 energy project account the first \$30 million of the revenues
 6-64 collected under this chapter that are allocated to the general
 6-65 revenue fund under Subsection (a)(2) in any state fiscal biennium.

6-66 SECTION 9. Effective September 1, 2020, Section 182.122,
 6-67 Tax Code, is amended to read as follows:

6-68 Sec. 182.122. ALLOCATION OF TAX. Revenues collected under
 6-69 this chapter are allocated:

6-70 (1) one-fourth to the foundation school fund; and

7-1 (2) three-fourths to the general revenue fund.

7-2 SECTION 10. Subchapter B, Chapter 202, Tax Code, is amended
7-3 by adding Section 202.0545 to read as follows:

7-4 Sec. 202.0545. TAX EXEMPTION FOR ENHANCED RECOVERY PROJECTS
7-5 USING ANTHROPOGENIC CARBON DIOXIDE. (a) Until the United States
7-6 Environmental Protection Agency or the Texas Commission on
7-7 Environmental Quality adopts a final rule or regulation regulating
7-8 carbon dioxide as a pollutant and subject to the limitations
7-9 provided by this section, the producer of oil recovered through an
7-10 enhanced oil recovery project that qualifies under Section 202.054
7-11 for the recovered oil tax rate provided by Section 202.052(b) is
7-12 entitled to an additional 50 percent reduction in that tax rate if
7-13 in the recovery of the oil the enhanced oil recovery project uses
7-14 carbon dioxide that:

7-15 (1) is captured from an anthropogenic source in this
7-16 state;

7-17 (2) would otherwise be released into the atmosphere as
7-18 industrial emissions;

7-19 (3) is measurable at the source of capture; and

7-20 (4) is sequestered in one or more geological
7-21 formations in this state following the enhanced oil recovery
7-22 process.

7-23 (b) In the event that a portion of the carbon dioxide used in
7-24 the enhanced oil recovery project is anthropogenic carbon dioxide
7-25 that satisfies the criteria of Subsection (a) and a portion of the
7-26 carbon dioxide used in the project fails to satisfy the criteria of
7-27 Subsection (a) because it is not anthropogenic, the tax reduction
7-28 provided by Subsection (a) shall be reduced to reflect the
7-29 proportion of the carbon dioxide used in the project that satisfies
7-30 the criteria of Subsection (a).

7-31 (c) To qualify for the tax rate reduction under this
7-32 section, the operator must:

7-33 (1) apply to the comptroller for the reduction and
7-34 include with the application any information and documentation that
7-35 the comptroller may require; and

7-36 (2) apply for a certification from:

7-37 (A) the Railroad Commission of Texas, if carbon
7-38 dioxide used in the project is to be sequestered in an oil or
7-39 natural gas reservoir;

7-40 (B) the Texas Commission on Environmental
7-41 Quality, if carbon dioxide used in the project is to be sequestered
7-42 in a geological formation other than an oil or natural gas
7-43 reservoir; or

7-44 (C) both the Railroad Commission of Texas and the
7-45 Texas Commission on Environmental Quality if both Paragraphs (A)
7-46 and (B) apply.

7-47 (d) An agency to which an operator applies for a
7-48 certification under Subsection (c)(2) may issue the certification
7-49 only if the agency finds that, based on substantial evidence, there
7-50 is a reasonable expectation that:

7-51 (1) the operator's planned sequestration program will
7-52 ensure that at least 99 percent of the carbon dioxide sequestered as
7-53 required by Subsection (a)(4) will remain sequestered for at least
7-54 1,000 years; and

7-55 (2) the operator's planned sequestration program will
7-56 include appropriately designed monitoring and verification
7-57 measures that will be employed for a period sufficient to
7-58 demonstrate whether the sequestration program is performing as
7-59 expected.

7-60 (e) The tax rate reduction does not apply if the operator's
7-61 sequestration program or the operator's monitoring and
7-62 verification measures differ substantially from the planned
7-63 program described by Subsection (d), and the operator shall refund
7-64 the difference between the amount of the tax paid under this section
7-65 and the amount that would have been imposed in the absence of this
7-66 section.

7-67 (f) The comptroller shall approve the application if the
7-68 operator submits the certification or certifications required by
7-69 Subsection (c)(2) and if the comptroller determines that the oil is
7-70 otherwise eligible under this section.

8-1 (g) If, before the comptroller approves an application for
8-2 the tax rate reduction under this section, the tax imposed by this
8-3 chapter is paid at the rate provided by Section 202.052(a) or (b) on
8-4 oil that qualifies under this section, the producer or producers of
8-5 the oil are entitled to a credit against taxes imposed by this
8-6 chapter in an amount equal to the difference between the tax paid on
8-7 the oil and the tax due on the oil after the rate reduction under
8-8 this section is applied. The credit is allowed to each producer
8-9 according to the producer's proportionate share in the oil. To
8-10 receive a credit, one or more of the producers of the oil must apply
8-11 to the comptroller for the credit not later than the first
8-12 anniversary of the date the oil is produced.

8-13 (h) The comptroller, the Railroad Commission of Texas, and
8-14 the Texas Commission on Environmental Quality may adopt rules and
8-15 establish procedures to implement and administer this section.

8-16 SECTION 11. Section 313.024(b), Tax Code, as effective
8-17 January 1, 2008, is amended to read as follows:

8-18 (b) To be eligible for a limitation on appraised value under
8-19 this subchapter, the entity must use the property in connection
8-20 with:

- 8-21 (1) manufacturing;
- 8-22 (2) research and development;
- 8-23 (3) a clean coal project, as defined by Section 5.001,
8-24 Water Code;
- 8-25 (4) an advanced clean energy [a gasification] project,
8-26 as defined by Section 382.003, Health and Safety Code [for a coal
8-27 and biomass mixture]; or
- 8-28 (5) renewable energy electric generation.

8-29 SECTION 12. Not later than September 1, 2015, the State
8-30 Energy Conservation Office shall issue a report to the legislature
8-31 providing an assessment of whether the advanced clean energy
8-32 program should be extended due to a continued need for incentives to
8-33 ensure that a diverse range of affordable fuels, including lignite,
8-34 can be used in a manner that achieves the lowest emission profile
8-35 that is technically and economically feasible.

8-36 SECTION 13. The State Energy Conservation Office shall
8-37 adopt rules to establish the advanced clean energy grant and loan
8-38 program under Section 447.013, Government Code, as added by this
8-39 Act, not later than January 1, 2008. Such rules may allow for the
8-40 recovery of fees and administrative expenses.

8-41 SECTION 14. Section 382.0518(c-1), Health and Safety Code,
8-42 as added by this Act, applies only to an application for a permit
8-43 under Section 382.0518, Health and Safety Code, that is received by
8-44 the Texas Commission on Environmental Quality on or after January
8-45 1, 2008.

8-46 SECTION 15. Not later than January 1, 2008, the Texas
8-47 Commission on Environmental Quality shall adopt rules required
8-48 under Section 382.0566, Health and Safety Code, and Section
8-49 11.31(k), Tax Code, as added by this Act, and Section 26.045(f), Tax
8-50 Code, as amended by this Act.

8-51 SECTION 16. Section 447.013(j), Government Code, as added
8-52 by this Act, takes effect only if the constitutional amendment
8-53 proposed by the 80th Legislature, Regular Session, 2007,
8-54 authorizing the issuance of general obligation bonds to provide and
8-55 guarantee loans to encourage clean energy projects is approved by
8-56 the voters. If that amendment is not approved by the voters,
8-57 Section 447.013(j), Government Code, as added by this Act, has no
8-58 effect.

8-59 SECTION 17. Except as otherwise provided by this Act, this
8-60 Act takes effect immediately if it receives a vote of two-thirds of
8-61 all the members elected to each house, as provided by Section 39,
8-62 Article III, Texas Constitution. If this Act does not receive the
8-63 vote necessary for immediate effect, this Act takes effect
8-64 September 1, 2007.

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